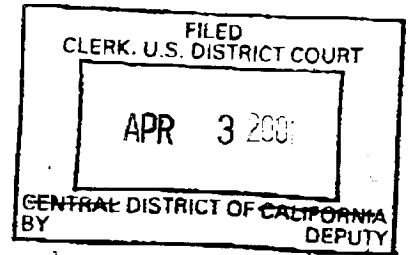


CHIEF JUDGE COUGHENOUR



Wester Washington

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

AHMED RESSAM,

Defendant.

NO. CR99-666C

MOTION AND MEMORANDUM OF
LAW IN SUPPORT OF DEFENDANT'S
MOTION FOR JUDGMENT OF
ACQUITTAL ON COUNT 1

NOW COMES the defendant, Ahmed Ressam, by undersigned counsel, and asks this Court to consider the following motion and memorandum of law in support of his motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29(a).

ARGUMENT

In various pretrial pleadings (Dkt. Nos. 123, 146, 183), the defendant has argued that Count 1 is fundamentally flawed in several respects: because the Indictment is too vague and indefinite to provide adequate notice of the charge against him; because it alleges a crime that does not exist, i.e., conspiracy to commit a conspiracy; because it may allege a conspiracy that does not exist under Washington law insofar as it alleges a conspiracy to commit offenses

MOT & MEM. OF LAW IN SUPPORT OF DEFENDANT'S
MOT FOR JUDGMENT OF ACQUITTAL ON CNT. 1
(AHMED RESSAM) - 1 -

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1 defined in terms of recklessly causing a result; and because it could not prove that the State of
2 Washington would have criminal jurisdiction over the offenses alleged. As the defendant
3 pointed out, these defects appeared to stem from the inability of the government to identify
4 the target of the alleged conspiracy.

5 In its case-in-chief, the government introduced no evidence about the target of the
6 conspiracy. Consequently, the defendant hereby renews all of his objections to Count 1.
7 Additionally, apart from any legal deficiencies in the Indictment, there is simply a failure of
8 proof, which compels this motion for a judgment of acquittal as to this count.¹

9 It is undisputed that, in order to prove a violation of 18 U.S.C. § 2332b(a)(1)(B), the
10 government must introduce evidence from which a jury could conclude beyond a reasonable
11 doubt that the defendant conspired "to destroy or damage any structure, conveyance, or other
12 real or personal property within the United States." This requires proof that the defendant
13 was a member of a conspiracy that had as its objective the destruction of property within the
14 United States, that he knew this was the objective of the conspiracy, and that he intended to
15 help accomplish that objective. See, e.g., Ingram v. United States, 360 U.S. 672 (1959)
16 (knowledge of the objective of the conspiracy is an essential element of any conspiracy
17 conviction); United States v. Monroe, 552 F.2d 806, 862-63 (9th Cir.), cert. denied, 431 U.S.
18 972 (1977).

19 The government has not established proof of any of these elements. There is an
20 absence of any evidence, either direct or circumstantial, that Mr. Ressam knew there were
21 explosives in the car, let alone their intended destination. Most glaring however, is the lack of
22

23 ¹ This failure of proof disclaimed below, supports Mr. Ressam's position that the State of
24 Washington would not have jurisdiction over the offenses alleged. As noted, the defendant has also
25 objected to his Indictment as charging a conspiracy to commit a conspiracy and as failing to identify
26 which of the underlying substantive crimes allegedly was violated. *A fortiori*, the government also has
failed to introduce sufficient evidence to prove their underlying offenses

1 evidence that he intended to help accomplish the objective of the alleged conspiracy, or that
2 he even knew what the objective was. In fact, the government has not even introduced
3 sufficient evidence from which a jury could find that any two persons, even excluding Mr.
4 Ressam, agreed to destroy property within the United States. Under these circumstances, Mr.
5 Ressam is entitled to a judgment of acquittal on this count.

6 Where the government has proven a conspiracy, evidence establishing a defendant's
7 connection with it, even though the connection is slight, is sufficient to convict the defendant
8 of conspiracy.² United States v. Bautista-Avila, 6 F.3d 1360, 1362 (9th Cir. 1993). However,
9 the evidence must show that the defendant had "knowledge of the conspiracy and acted in
10 furtherance of it. Mere casual association of conspiring people is not enough." Id. (quotation
11 and citation omitted) (emphasis in original). See also United States v. Roy, 589 F.2d 1258,
12 1268-69 (5th Cir. 1979) ("The essence of conspiracy is agreement; '(n)obody is liable in
13 conspiracy except for the fair import of the concerted purpose or agreement as he understands
14 it.'").

15 Although the evidence introduced by the government would support a finding that Mr.
16 Ressam had knowledge of the timing devices found in the trunk of the car he was driving, it
17 would not support a finding that he knew there were explosives in the car. Still less was there
18 any evidence that he knew the explosives would be used to destroy real or personal property,
19 that the property was located within the United States, and that he intended to help
20 accomplish that goal. See, e.g., United States v. Hrasonich, 819 F. 2d 253, 254 (9th Cir.

21 _____
22 ² In this case, the government cannot take advantage of that principle because there was
23 insufficient evidence of a conspiracy, i.e., an agreement by two or more persons, other than Mr. Ressam,
24 to destroy property within the United States. Although the government need not show evidence of an
25 express agreement, see United States v. Hegwood, 977 F.2d 492, 497 (9th Cir. 1992) (agreement
26 element may be inferred from conduct), no evidence in this case was introduced from which an
agreement to accomplish the specific goal in this case - the destruction of property within the United
State - may be inferred.

1 1987) (even if defendant knew alleged conspirator intended to use him to hide true ownership
 2 of property in order to evade income tax, defendant's conviction of conspiracy to defraud the
 3 United States in the "ascertainment, computation, assessment and collection" of the personal
 4 income taxes of a third party could not stand because government did not show defendant
 5 knew that was alleged objective of conspiracy).

6 Even if Mr. Ressam's behavior is consistent with someone involved in a conspiracy of
 7 this nature, it is equally consistent with someone who is "unwittingly associating with
 8 individuals" involved in such a conspiracy. Bautista-Avila, 6 F.3d at 1362. Consequently, he
 9 is entitled to a judgment of acquittal on this count. "When there is an innocent explanation
 10 for defendant's conduct as well as one that suggests that the defendant was engaged in
 11 wrongdoing, the government must produce evidence that would allow a rational jury to
 12 conclude beyond a reasonable doubt that the latter explanation is the correct one." Id.
 13 (quoting United States v. Vasquez-Chan, 970 F.2d 546, 549 (9th Cir. 1992)). The
 14 government introduced no evidence that Mr. Ressam knew the goal of the conspiracy was to
 15 destroy real or personal property and more specifically, that the target of the conspiracy was
 16 within the United States. Where the objective of conspiracy, as here, includes a particular
 17 location, the defendant's knowledge must extend to the identity of that location. See, e.g.
 18 United States v. Conroy, 589 F.2d 1258, 1270 (5th Cir. 1979) ("Conspiracy to import a
 19 controlled substance into the United States requires proof of an agreement to commit every
 20 element of that substantive offense. Just as defendant cannot be convicted of such a
 21 conspiracy without knowledge that the substance he was carrying was controlled . . . so the
 22 government must meet the burden of showing that the conspiracy to import was directed at the
 23 United States . . ."); United States v. Rubies, 612 F.2d 397 (9th Cir. 1979) (the Ninth Circuit,
 24 citing to United States v. Conroy, assumed, without deciding, that for purposes of sufficiency
 25 argument that actual knowledge of the true destination was a required element to convict

1 defendant of importing marijuana into the United States).

2 Where the goal of a conspiracy is not realized, this may present particular problems of
3 proof. In a somewhat different but nonetheless instructive context, the Supreme Court
4 recognized that in certain conspiracy cases, where the object of the conspiracy was not
5 identified, there was a need for proof that would not otherwise have been required if the
6 conspiracy had been consummated. United States v. Fiola, 420 U.S. 671 (1975). The
7 conspiracy in that case was to assault federal officers. The court recognized that the general
8 rule that "where knowledge of the facts giving rise to federal jurisdiction is not necessary for
9 conviction of a substantive offense embodying a *mens rea* requirement, such knowledge is
10 equally irrelevant to questions of responsibility for conspiracy to commit that offense" id. at
11 694, was subject to an exception for the situation where knowledge of the parties to a
12 conspiracy is necessary to establish the existence of federal jurisdiction. Id. The court stated
13 as follows:

14 Where . . . there is an unfulfilled agreement to assault, it must be
15 established whether the agreement, standing alone, constituted a
16 sufficient threat to the safety of a federal officer so as to give rise
17 to federal jurisdiction. If the agreement calls for an attack on an
18 individual specifically identified, either by name or by some
19 unique characteristic . . . and that specifically identified individual
20 is in fact a federal officer, the agreement may be fairly
21 characterized as one calling for an assault upon a federal officer,
22 even though the parties were unaware of the victim's actual
23 identity and even though they would not have agreed to the assault
24 had that known that identity. Where the object of the intended
25 attack is not identified with sufficient specificity so as to give rise
26 to the conclusion that had the attack been carried out the victim
would have been a federal officer, it is impossible to assert that
the mere act of agreement to assault poses a sufficient threat to
federal personnel and functions so as to give rise to federal
jurisdiction.

23 Id. at 694.

24 This analysis informs the inquiry whether the government offers sufficient evidence of
25 the conspiracy in the present case, where the conspiracy was never consummated, and its

26 MOT & MEM. OF LAW IN SUPPORT OF DEFENDANT'S
MOT FOR JUDGMENT OF ACQUITTAL ON CNT. 1
(AHMED RESSAM) - 5 -

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1 object was not thereby made known. The need to prove that the object of the conspiracy was
 2 property within the United States is even stronger here, however, because the location, i.e.,
 3 within the United States, is not simply a jurisdictional fact but an element of the substantive
 4 offense and conspiracy offense under 18 U.S.C. § 2332b(a)(1)(B).³ Compare Fiola, 420 U.S.
 5 at 676 (because the "federal officer" requirement under 18 U.S.C. § 111 was intended to
 6 federalize every assault which happens to have a federal officer as its victim, the requirement
 7 is jurisdictional only and therefore scienter is not a necessary element of substantive offense
 8 under § 111).

9 DATED this 3rd day of April, 2001.


10 Respectfully submitted,

11 

12 Thomas W. Hillier, II
 13 Federal Public Defender
 14 Attorney for Ahmed Ressam

15 

16 Michael Filipovic
 17 Assistant Federal Public Defender
 18 Attorney for Ahmed Ressam

19 

20 Jo Ann Oliver
 21 Assistant Federal Public Defender
 22 Attorney for Ahmed Ressam

23 ³ The jurisdictional bases for § 2332b are enumerated in subsection (b) of that statute. The
 24 indictment alleged subsection (A) of § 2332b(1), "alleging that the conspirators utilize[d] a facility of
 25 foreign commerce." The language in § 2332b(a)(1)(B), "within the United States," is part of the
 elements of the crime. To assume otherwise would be to ignore the fundamental rule of statutory
 construction that all words in a statute must be given meaning. See Williams v. Taylor, 529 U.S. 362,
 364 (2000) (under the "cardinal principle of statutory construction . . . courts must give effect, if
 possible, to every clause and word of a statute[.]").

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2001, I caused to be hand delivered a copy of
MOTION AND MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION
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DATED this 3rd day of April, 2001.

